Department of Energy
Washington, DC 20585

August 5, 2008

MEMORANDUM FOR: INGRID KOLB
DIRECTOR, OFFICE OF MANAGEMENT

THRU: KEVIN T. HAGERTY
DIRECTOR, OFFICE OF INFORMATION RESOURCES

FROM: KATHARINE A. FREDRIKSEN
ACTING ASSISTANT SECRETARY for POLICY AND INTERNATIONAL AFFAIRS

SUBJECT: Notice of Intent to Develop a Directive for the Department of Energy's Process to Analyze Transactions Filed before the Committee on Foreign Investments in the United States.

PURPOSE: The purpose for this Directive is to memorialize the process the Department follows to review and evaluate transactions filed before the Committee on Foreign Investments in the United States.

JUSTIFICATION: On July 26, 2007, President George W. Bush signed into law the Foreign Investment and National Security Act of 2007 ("FINSA"), which amends section 721 of the Defense Production Act of 1950. Section 721 creates a process by which the President and his delegee, the Committee on Foreign Investment in the United States ("CFIUS"), conduct national security reviews of foreign acquisitions of control of U.S. businesses. FINSA makes DOE a member of CFIUS and substantially increases the Department's role in CFIUS national security reviews.

FINSA requires that, upon receipt by Treasury of written notification of a "covered transaction" (i.e., a merger, acquisition, or takeover by or with any foreign person that could result in foreign control of any person engaged in interstate commerce in the United States), the President, acting through CFIUS, shall *review* the transaction within 30 days to determine its effects on national security, based on any relevant factors, including several new factors FINSA added to an illustrative list contained in section 721 of the Defense Production Act. If, during its review, CFIUS determines that (1) the transaction threatens to impair U.S. national security and the threat has not yet been mitigated, (2) the lead agency recommends an investigation and CFIUS concurs, (3) the transaction would result in foreign government control, or (4) the transaction would result in the control of any U.S. critical infrastructure that could impair U.S. national security and the threat has not yet been mitigated, then CFIUS must

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conduct and complete within 45 days an investigation of the transaction.

In response to FINSA, DOE has taken steps to meet its obligations under FINSA. A new position, the Director of Investment Security, within the Office of Policy and International Affairs was created to manage the Department's CFIUS activities. Since creating the position the Director has created a DOE CFIUS working group comprised of members representing all program offices (including General Counsel and CIO); instituted a processes ad protocols for DOE CFIUS reviews, including standards for review; and established institutional controls and tracking systems to ensure that cases are documented and auditable.

The Department is bound by law to fully participate in the actions of CFIUS. The activities and issues cut across all Departmental program lines and require a unified and reliable process.

The proposed directive does not duplicate existing laws, regulations or national standards and it does not create undue burden on the Department.

IMPACT: There is nominal impact to budget. The costs are limited to personnel time required to conduct reviews.

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CTA CONCURENCE:

_____	(DOE/Energy)	Not on CTA list.
N/A	(DOE/Science)	
_____	(NNSA)	KGM 8/6/08

DECISION:

Concur: _____

Nonconcur: _____

Timeframe: ___ 30 days ___ 60 days ___ 90 days ___ 120 days

Date: _____